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7 UNITED STATES DISTRICT COURT
8 CENTRAL DISTRICT OF CALIFORNIA
9 WESTERN DIVISION
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11 ELVIA HEREDIA,) No. CV 11-08103-VBK
12)
13 Plaintiff,) MEMORANDUM OPINION
14) AND ORDER
15 v.)
16) (Social Security Case)
17 MICHAEL J. ASTRUE,)
18 Commissioner of Social)
19 Security,)
20)
21 Defendant.)
22 _____)
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18 This matter is before the Court for review of the decision by the
19 Commissioner of Social Security denying Plaintiff's application for
20 disability benefits. Pursuant to 28 U.S.C. §636(c), the parties have
21 consented that the case may be handled by the Magistrate Judge. The
22 action arises under 42 U.S.C. §405(g), which authorizes the Court to
23 enter judgment upon the pleadings and transcript of the record before
24 the Commissioner. The parties have filed the Joint Stipulation
25 ("JS"), and the Commissioner has filed the certified Administrative
26 Record ("AR").

27 Plaintiff raises the following issues:

28 1. Whether the Administrative Law Judge ("ALJ") gave proper

1 weight to the opinions of Plaintiff's treating physician.
2 (JS at 3.)
3

4 This Memorandum Opinion will constitute the Court's findings of
5 fact and conclusions of law. After reviewing the matter, the Court
6 concludes that the decision of the Commissioner must be affirmed.
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8 I

9 **THE ALJ DID NOT IMPROPERLY DISCOUNT THE WEIGHT**
10 **TO BE ACCORDED TO THE OPINION OF DR. TAW**

11 In Plaintiff's first issue, she asserts the ALJ did not give
12 proper weight to the opinions of her treating physician, Dr. Taw.

13 Initially, the question to be determined is whether Dr. Taw was
14 a treating, examining, or non-examining physician. Plaintiff asserts
15 that Dr. Taw should be characterized as a treating physician based on
16 a letter that he wrote addressed "to whom it may concern," described
17 as a "Disability letter for [Plaintiff]," dated March 23, 2009, which
18 is accompanied by a "check the box" form entitled "Physical Capacities
19 Evaluation" that provides Dr. Taw's opinion, as of March 30, 2009,
20 concerning Plaintiff's physical functional abilities. (AR 658-659.)
21 While Plaintiff makes reference to Dr. Taw's own physical examination
22 of Plaintiff, which she asserts can be inferred from his letter, this
23 simply reads too much into it. Dr. Taw would seem to be summarizing
24 medical records from the facility with which he is associated, but
25 none of those medical records are included in the AR and Dr. Taw's
26 "check the box" form is not supported by any apparent objective
27 testing. It is quite fundamental in Social Security law that such
28 conclusory or otherwise seemingly unsupported conclusions are to be

1 given little weight in the disability evaluation. See Matney v.
2 Sullivan, 981 F.2d 1016, 1019 (9th Cir. 1992)(citing Magallanes v.
3 Bowen, 881 F.2d 747, 751 (9th Cir. 1989)).

4 The ALJ instead largely relied upon the testimony of Medical
5 Expert ("ME"), Dr. Nafosi. As the Commissioner notes, the ALJ's
6 decision sets forth a detailed analysis of the existing medical
7 evidence of record, and the reasons for the ALJ's reliance on Dr.
8 Nafosi's interpretation of those records. Dr. Nafosi's conclusions
9 are consistent with this evidence in the record, and as such, the ALJ
10 could properly rely upon them. See Thomas v Barnhart, 278 F.3d 947,
11 956-957 (9th Cir. 2002).

12 More importantly, the Court notes that the ALJ did not contradict
13 Dr. Taw's conclusion that Plaintiff suffers from fibromyalgia, indeed
14 finding that it one of Plaintiff's severe impairments as of January 1,
15 2006. (AR 16.) Moreover, based on medical evidence of record, the ALJ
16 did assess functional restrictions in determining Plaintiff's Residual
17 Functional Capacity ("RFC") which resulted in a conclusion that
18 Plaintiff is capable of a very limited range of light work. (AR 20.)

19 The Court also notes that Plaintiff does not claim error in the
20 ALJ's evaluation of the opinions of other physicians, including
21 Plaintiff's treating physician Dr. Khan, which was evaluated in detail
22 by the ALJ. (AR 23-24.) Finally, the Court agrees with the
23 Commissioner's interpretation that Dr. Taw's letter contains
24 generalities which are not specifically applicable to Plaintiff, but,
25 instead, to some people who suffer from fibromyalgia (e.g.,
26 "fibromyalgia can be very debilitating, ..." [AR 658]). Other parts
27 of Dr. Taw's report, which Plaintiff argues are consistent with the
28 medical evidence of record, do not lead to a contrary conclusion. For

1 example, Plaintiff argues that other physicians diagnosed that
2 Plaintiff suffers from sleep apnea, which is referenced in Dr. Taw's
3 letter. This does not change the Court's conclusion, because the ALJ
4 agreed that Plaintiff has sleep apnea as of January 1, 2006. (AR 16.)
5 The issue is the extent to which Plaintiff's severe impairments
6 contribute to functional limitations relevant to the disability
7 analysis. In this regard, the Court can find no error in the ALJ's
8 analysis, which is supported by substantial evidence in the record.

9 For the foregoing reasons, the Commissioner's decision will be
10 affirmed. The case will be dismissed with prejudice.

11 **IT IS SO ORDERED.**

12
13 DATED: June 12, 2012

14 /s/
VICTOR B. KENTON
UNITED STATES MAGISTRATE JUDGE